



DISCIPLINARY COUNSEL v. JACOBS.

**[Cite as *Disciplinary Counsel v. Jacobs*,
109 Ohio St.3d 252, 2006-Ohio-2292.]**

*Attorneys — Misconduct — Dual representation — Accepting or continuing
representation when professional judgment likely to be compromised —
Public reprimand.*

(No. 2005-2395 — Submitted January 25, 2006 — Decided May 24, 2006.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and
Discipline of the Supreme Court, No. 05-055.

Per Curiam.

{¶ 1} Respondent, Frank David Jacobs of Toledo, Ohio, Attorney Registration No. 0011310, was admitted to the Ohio bar in 1959.

{¶ 2} On August 11, 2005, relator, Disciplinary Counsel, filed an amended complaint charging respondent with professional misconduct. A panel of the Board of Commissioners on Grievances and Discipline considered the case on the parties' consent-to-discipline agreement, see Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.") and made findings of misconduct and a recommendation, which the board adopted.

Misconduct

{¶ 3} Respondent began representing Dr. Wassef E. Michael Mikhail and his wife Salma Mikhail in 1985. The Mikhails separated in March 2001, and they divorced in June 2003. After the Mikhails' separation, respondent advised Dr. Mikhail on matters involving revisions to a revocable trust. The revisions removed Mrs. Mikhail as successor trustee and ensured that she would not have

access to the principal of the trust on Dr. Mikhail's death. Respondent also advised Dr. Mikhail to transfer some of his assets to keep them from Mrs. Mikhail.

{¶ 4} Despite his representation of Dr. Mikhail while the divorce was pending, respondent also advised Mrs. Mikhail on the drafting of a will. As Mrs. Mikhail directed, the new will that respondent prepared for her eliminated Dr. Mikhail as executor and beneficiary of her estate. Respondent did not provide full disclosure to Mrs. Mikhail of his representation of her husband and did not attempt to obtain her consent for the dual representation.

{¶ 5} Respondent acknowledged and the board found that respondent had thereby violated DR 5-105(B) (prohibiting a lawyer from accepting or continuing to represent clients if the lawyer's professional judgment on any client's behalf is likely to be compromised by the representation).

Sanction

{¶ 6} In recommending a sanction for this misconduct, the board considered the aggravating and mitigating factors listed in BCGD Proc.Reg. 10. The board stated that there were no aggravating factors, but did identify several mitigating factors, including the absence of any prior disciplinary record, the absence of any dishonest or selfish motive on the part of respondent, his full disclosure and cooperative attitude during the disciplinary process, and the absence of any financial harm to Mrs. Mikhail. The board further noted that respondent had submitted written statements from 16 judges, clients, and other attorneys about his good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e).

{¶ 7} The parties recommended that respondent be publicly reprimanded. The panel and the board agreed with this recommendation.

{¶ 8} We agree that respondent has committed the misconduct described above, and we agree that a public reprimand is the appropriate sanction. "[A]

lawyer's duty to provide undivided loyalty to a client is paramount." *Columbus Bar Assn. v. Ross*, 107 Ohio St.3d 354, 2006-Ohio-5, 839 N.E.2d 918, ¶ 29. Lawyers must avoid all actual and potential conflicts of interest so as not to dilute their independent loyalty to each client. Respondent's misstep in this regard is allayed, however, by his many years of unblemished legal practice, as well as the other mitigating factors cited by the board. All of the letters presented to the board on his behalf speak to respondent's integrity, competence, and professionalism, and we trust that a public reprimand is sufficient to ensure that this misconduct will not recur.

{¶ 9} Accordingly, respondent is publicly reprimanded. Costs are taxed to respondent.

Judgment accordingly.

RESNICK, PFEIFER, LUNDBERG STRATTON and LANZINGER, JJ., concur.

MOYER, C.J., O'CONNOR and O'DONNELL, JJ., dissent.

MOYER, C.J., dissenting.

{¶ 10} I would suspend respondent for six months and stay the suspension on the condition that he commit no further misconduct during that term.

O'CONNOR and O'DONNELL, JJ., concur in the foregoing dissenting opinion.

Jonathan E. Coughlan, Disciplinary Counsel, and Brian E. Shinn, Assistant Disciplinary Counsel, for relator.

James D. Caruso, for respondent.

Event Report

Event ID: 2023-024092

Call Ref #: 931

Date/Time Received: 03/06/23 13:00:57

Rpt #:	Call Source: PHONE	Prime 152 Unit: WHITMORE, TRAVIS M	Services Involved			
			LAW			
Location: 500 RIVERSIDE DR						
X-ST: EAGLE POINT DR			Jur: WCS Service: LAW Agency: ROSS			
EAGLE POINT DR			St/Beat: ROSS District: NRTH		RA: 620	
Business:			Phone: () -		GP: ROSS	
Nature: SUSPICIOUS INCIDENT		Alarm Lvl: 1	Priority: 2	Medical Priority:		
Caller: MOORJANI,DEEPAK			Alarm:			
Addr: 500 RIVERSIDE DR			Phone: (508) 704-1111		Alarm Type:	
Vehicle #:	St:	Report Only: No	Race:	Sex:	Age:	
Call Taker: NVAUGHAN			Console: 5004			
Geo-Verified Addr.: Yes		Nature Summary Code:	Disposition: COMP	Close Comments:		
<p>Notes: CONTACTED 173 AND ADVISED THAT THE INCIDENT OCCURRED BETWEEN 1970 AND 1998 [03/10/23 12:16:43 JVARGAS]</p> <p>SPOKE WITH CALLER AND HE ADVISED HE WANTED A REPORT REGARDING DOMESTIC VIOLENCE FOR 1970-1990. CALLER STATED FATHER USED TO BEAT MOTHER. CALLER ADVISED HE IS CURRENTLY TRYING TO REPORT ELDER ABUSE FOR HIS MOTHER SINCE HIS BROTHER WONT LET HER LIVE IN HER HOUSE IN CALIFORNIA. CALLER STATED HE WANTED A REPORT TO SHOW A PATTERN OF ABUSE. CALLER LIVES IN CALIFORNIA, MOTHER LIVES IN CALIFORNIA, AND FATHER LIVES IN FLORIDA. I ATTEMPTED TO CALL THE MOTHER AND DID NOT GET AN ANSWER. I THEN SPOKE WITH FATHER AND HE DENIED ALL ALLEGATIONS.</p> <p>NFI. [03/06/23 14:01:23 Unit:152]</p> <p>REPORTING DOMESTIC VIOLENCE BETWEEN MOTHER AND FATHER THAT HAPPENED IN THE 70s 80s AND 90s. CALLER AND MOTHER ARE IN DIFFERENT CITIES IN CALIFORNIA. FATHER IS IN FLORIDA. SEEKING REPORT AT THE ADVICE OF LEGAL COUNSEL FOR A PROTECTIVE ORDER. [03/06/23 13:04:55 NVAUGHAN]</p>						

Times

Call Received: 03/06/23 13:00:57	Time From-Call Received		
Call Routed: 03/06/23 13:04:55	000:03:58	Unit Reaction: : :	(1st Dispatch to 1st Arrive)
Call Take Finished: 03/06/23 13:04:55	000:03:58	En-Route: : :	(1st Dispatch to 1st En-Route)
1st Dispatch: 03/06/23 13:06:18	000:05:21 (Time Held)	On-Scene: : :	(1st Arrive to Last Clear)
1st En-Route:	: :		
1st Arrive:	: :	(Reaction Time)	
Last Clear: 03/06/23 14:02:13	001:01:16		

Radio Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
152	450914	D	Dispatched	03/06/23 13:06:18	Stat/Beat: ROSS		NVAUG
152	450914	C	Cleared	03/06/23 14:02:13	COMP [COMP]	COMP	JVARGA

Event Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
		TR	Time Received	03/06/23 13:00:57	By: PHONE		NVAUG
		ENT	Entered Street	03/06/23 13:01:18	500 RIVERSIDE DR		NVAUG

Unit	Empl ID	Type	Description	Time Stamp	Event Log	Close Code	User
					Comments		
		ENT	Entered	03/06/23 13:01:36	MOORJANI,TEEPAK		NVAUG
		ENT	Entered CallerPhone	03/06/23 13:01:44	MOORJANI,TEEPAK		NVAUG
		ENT	Entered Nature	03/06/23 13:01:50	DOMESTIC VIOLENCE		NVAUG
		CHG	Changed Nature	03/06/23 13:02:09	DOMESTIC VIOLENCE --> CIVIL		NVAUG
		VCH	Viewed Call History	03/06/23 13:03:07	Location Information		NVAUG
		ENT	Entered Remarks	03/06/23 13:04:55			NVAUG
		FIN	Finished Call Taking	03/06/23 13:04:55			NVAUG
		CHG	Changed Nature	03/06/23 13:05:29	CIVIL DISPUTE / COMPLAINT -->		NVAUG
		VEV	Viewed Event	03/06/23 13:06:13	User First Viewed Event CAD		JFLAGE
		VEV	Viewed Event	03/06/23 13:07:10	User First Viewed Event CAD		SSHAWV
		ARM	Added Remarks	03/06/23 14:01:23			Unit:152
		CHG	Changed	03/10/23 12:15:48	MOORJANI,TEEPAK -->		JVARGA
		ARM	Added Remarks	03/10/23 12:16:43			JVARGA